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Thio Li-ann on Free Speech, Social Values and Sustainable Democracy

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Thio Li-ann on Free Speech, Social Values and Sustainable Democracy

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An academic who has had a short stint in the Singapore Parliament as a Nominated Member of Parliament (NMP), [Thio Li-ann](http://law.nus.edu.sg/faculty/staff/profileview.asp?UserID=lawtla) (<http://law.nus.edu.sg/faculty/staff/profileview.asp?UserID=lawtla>) drew on her experiences in the ivory tower and the "gladiatorial arena of politics" for her recent talk at SMU, organised by the [Wee Kim Wee Centre](http://www.business.smu.edu.sg/wkwc/index.asp) (<http://www.business.smu.edu.sg/wkwc/index.asp>).

Entitled '*Free Speech, Sustainable Democracy and Academic Freedom: Moving beyond Lip Service*', Thio, a law professor at the National University of Singapore, noted that free speech is something that everyone should be "profoundly concerned" about.

"What happens if there is a cost to free speech? And if there's a cost, why bother to speak?" she asked. Can speech kill speech? Thio admitted that these are questions she thinks about frequently – and it is easy to understand why, especially in light of the events that compelled her to cancel her [teaching appointment at NYU](http://www.nytimes.com/2009/07/23/education/23nyu.html) (<http://www.nytimes.com/2009/07/23/education/23nyu.html>) earlier this year.

If you treat people in a vulgar, vicious and/or violent fashion, you're just going to shut them up, they won't participate...

Speech takes many forms, of course, from 'artistic speech' to 'commercial speech'. However, the kind of speech that holds the highest priority, in Thio's opinion, is political speech. But, how free is speech if you cannot participate? After all, political ideas and thoughts can be quite difficult to understand, much less articulate.

As a former NMP, Thio said it used to take her up to two weeks to understand a bill and an additional one week to craft her speech; even longer, if research has to be done. "You want to say something sensible," she said, while questioning if it should be the state's responsibility to educate its citizens to a level that would allow them meaningful political participation.

Where speech is uniquely free

Speech is relational. "You don't just want to speak, you want to be heard. You don't just want to be heard, you want to be understood. You don't just want to be understood, you want to persuade," she said.

Free speech involves four parties - the speaker, the listener, the object of the speech and the community – and in any society, it should be situated within the balance of these four parties. In Singapore, free speech is "important enough" to be placed within the "supreme law of the land" – the constitution. However, it is important to view this in context.

The American model of free speech imposes "no limits" because they proceed from a "liberty-oriented" conception of free speech. This is based on the First Amendment of the US Constitution, which states that speech is an unrestricted right.

The European conception (derived from article 10 of the European Convention on Human Rights), on the other hand, is less "absolutist". Although the treaty states that "everyone has a right to freedom of expression", it qualifies that this freedom carries "duties, responsibilities, are subject to restrictions which are necessary in a democratic society". This "dignitarian" approach places 'the individual within the context of the community, which reflects a greater consciousness for the competing rights and interests within a society.

In Singapore, article 14 of the [Singapore Constitution](http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_getdata.pl?actno=1999-REVED-CONST&doctype=CONSTITUTION%20OF%20THE%20REPUBLIC%20OF%20SINGAPORE%0A&date=latest&method=part&sl=1&seqid=931158659-000271#931158659-000350) (http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_getdata.pl?actno=1999-REVED-CONST&doctype=CONSTITUTION%20OF%20THE%20REPUBLIC%20OF%20SINGAPORE%0A&date=latest&method=part&sl=1&seqid=931158659-000271#931158659-000350) states that free speech is "subject to" various factors; "subject to" being the operative words that signal the way in which free speech is regarded. For one, it has been made clear that only citizens should be involved political debates. Foreigners may add to the discussions, but the government's position is that they should not have their hands in grassroots politics.

"Foreigners only have the common law right to free speech, which is a lesser right, compared to a citizen, who has a constitutional right," Thio explained. So while ideas and ideologies can be shared and expressed freely, especially within the online space; when it comes down to the "nuts and bolts", a consistent distinction is made between *the citizen* and *the foreigner*.

We will not allow foreigners to interfere in our domestic politics. They are free to share their ideas, views and criticisms, including on the Internet where Singaporeans can freely access them. But foreigners do not have the right of citizens to take part directly in the politics of Singapore. We will not allow, for example, foreign funding of political parties or sponsorship of candidates for election. Singaporeans alone have the sovereign right to determine what kind of society they want Singapore to be.

*Deputy Prime Minister and Minister for Home Affairs, Wong Kan Seng
Singapore Parliament, 28 February 2008*

"We tend to think of free speech as being good for the plurality of ideas, but when we *come back down to earth*... you'll find that there are competing interests." Four were highlighted by the court in the recent "[racist blogger \(http://www.asiamedia.ucla.edu/article.asp?parentid=32352\)](http://www.asiamedia.ucla.edu/article.asp?parentid=32352)" case: (1) the right to propagate an opinion on the Internet (or right of free speech by a blogger); (2) the right of one person's freedom of expression, which has to be balanced by the right of the other to be free from offence; (3) no citizen should incite public disorder; and (4) it should not harm ethnic groups as it may harm the wider community.

In "another infamous case", *Chee Siok Chin v. Ministry of Home Affairs (2006)*, the court stated that Singapore society cannot be premised on radical individualism or narcissism. So "when we speak, we cannot speak as though as we are speaking into a hermetically-sealed capsule". While Singaporeans have the right to assembly or speech, they must be exercised "responsibly" and "within the confines of the law".

"But responsible to whom? There are as many varieties of responsibilities as there are political critics," Thio said. Could this notion of responsibility be a form of rhetoric? Here, responsibility can be interpreted as that of between citizens, or from citizens to the state. The former would imply more rights and freedoms to citizens while undue speech restrictions might facilitate the latter.

Thio also questioned what it means to exercise the right to free speech "within the confines of the law". After all, "the law" is ultimately "a product of public philosophy". Such questions give academics and scholars much to think about, she said.

The community factor

Singapore has a fairly "thick" concept of the community, compared to most Western liberal democracies. This is reflected in the emphasis on *strong public values*, for instance, *section 27A of the miscellaneous offences act*, which gives police the right to arrest someone who has been spotted naked in his own high-rise flat - a law that even the attorney general acknowledged, would be difficult to enforce, but yet, people want such a law.

An important aspect of free speech, however, is the right to criticise the politician. "This is because they are going to wield enormous powers, so we ought to know how they think or what they are going to do," Thio explained. That said; *public reputation* is important for politicians.

The rationale behind defamation laws is that "if a man is in a position of influence and he loses the respect of his peers, no one will listen to him. Therefore, it is important that when he is brought down, that he should get damages as a form of redress for his reputational loss." This, according to Thio, introduces what is known as "the chilling effect". "If I criticise you and you slam a libel suit on me, I'm likelier to shut up... because why should I speak if the cost is too high?" she asked.

In the case of the *Far Eastern Economic Review v. Lee Hsien Loong (2009)*, Thio noted that the defence had sought to argue for the "[Reynolds defence \(http://en.wikipedia.org/wiki/Reynolds_defence\)](http://en.wikipedia.org/wiki/Reynolds_defence)", a 'test' applied by the UK House of Lords which protects journalists from libel if they had acted "responsibly". This was rejected by the Singapore court on the grounds that "there is no room in our political context for the media to engage in investigative journalism which carries with it a political agenda."

The court added that the Singapore political culture places "a heavy emphasis on honesty and integrity in public discourse", that "reputation is an integral and important part of the dignity of an individual, and that it's not only an *individual right*, but also *in public interest*, because there is no virtue in demeaning a person falsely."

This rationale reflects a "thick" communitarian approach - especially if we are to believe, at the end of the day, that politicians of a good repute will be good for the society and its system of governance. However, the notion of what constitutes an 'individual right' remains contentious.

Your right versus my right

One way of looking at the issue of 'rights' or 'entitlements' is to see it as a "trump card" that holds the ultimate value of being unquestionable and undefeatable. But the other way of looking at 'rights' is from the point of "defeatable interests", which is to balance the competing rights and interests, and decide which should triumph.

Thio noted that the way in which the 'scope of rights' is understood from country-to-country would depend on the level of priority that a society gives to community interests. The starting point of a liberal state is the presumption of liberty. As such, there is a tendency to focus on *one* factor, as opposed to a balancing of *all* competing rights and interests. The starting point of the communitarian state is that of social values. Laws in the communitarian state are viewed as embodiments of what society perceives to be desirable standards of conduct. With that in mind, competing rights and interests are balanced.

In Singapore's context, the notion of the liberal state has been rejected - at least in many aspects of the law, according to Thio. "If you read certain criminal law cases, you'll find that a lot of the judges clearly state that one of the functions of the criminal law is to promote public order and communitarian values." In other words, they do not start from the presumption of liberty but examine the social values protected by the law.

Singapore's tough drug laws, for instance, are grounded in the notion of protecting social values. Why is it the state's business to

prosecute someone who opts to consume drugs for personal enjoyment? Because the public good outweighs the right to choose, she said. The law thus acts as a deterrent and the drug trade is seen to be a threat to society.


What of the right to free speech? Will it not serve society?


Thio raised four key rationales for the right to free speech: (1) Dogma results when speech is restricted – a closed system inhibits the free flow of ideas; (2) Fulfilment of self - we think, therefore we speak; (3) For democracy - that people should be able to debate political issues, as well as politicians. But, "to debate in a meaningful way, there should be viewpoint diversity... The whole point of democracy is deliberation: people discussing, debating and coming to their conclusions". Public debates should also be "based on reasons and conscience", as opposed to "bare emotionalism or dogmatic assertions"; and (4) Free speech promotes ideas of tolerance.

Tolerance, she emphasised, is about getting used to dissent. "Take the [recent sedition case](#) (http://www.straitstimes.com/Breaking%2BNews/Singapore/Story/STIStory_382751.html), where people sent out pamphlets that were offensive to other religions... Sometimes free speech means tolerating speech that you don't like. So send me a pamphlet that I don't like – I'd just throw it away. That, to me, is tolerance... getting used to the fact that no one will agree with you all the time."

END OF PART ONE. [READ PART 2 OF THIS ARTICLE. \(http://knowledge.smu.edu.sg/article.cfm?articleid=1252\)](http://knowledge.smu.edu.sg/article.cfm?articleid=1252)

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Thio Li-ann on Free Speech... (Part 2)

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Conditions for free speech

As we engage one other and wrestle with our problems, we will encounter different views, but far better for us to manage these honest differences than become an apathetic society with no views. People should debate issues with reason, passion and conviction, and not be passive bystanders in their own fate. Disagreement does not necessarily imply rebellion, and nor should unity of purpose and vision mean sameness in views and ideas.

*Speech by then-Deputy Prime Minister Lee Hsien Loong
"Building A Civic Society", Harvard Club of Singapore's 35th Anniversary Dinner, 2004*

Singaporeans have been described as 'politically apathetic'. This is an area where the government had sought to address by encouraging citizen participation. Referring to a [speech](http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan015426.pdf) (<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan015426.pdf>) given by (then-Deputy) Prime Minister Lee Hsien Loong at the Harvard Club in 2004, Thio said that Singaporeans could infer new areas where political speech should be permissible; or rather, where the 'OB (Out-of-Bounds) markers' lie.

In the speech, it was outlined that where issues of public morality and decency are concerned, the government would be guided by the community's consensus, and that political debates must be "robust" and "based on issues and not on assertions and emotions". These are principles that Thio welcomes, as an academic. But, as a former politician, she professes that such ideals are but ideals.

The second way to promote civic participation is to debate policies and national issues rigorously and robustly. Some people are afraid to speak up for fear of saying the wrong thing, or being taken to task. But for debate to be fruitful, it has to be rigorous and not held back out of concern for egos or sensitivities. It has to be issue-focussed, based on facts and logic, and not just on assertions and emotions.

*Speech by then-Deputy Prime Minister Lee Hsien Loong
"Building A Civic Society", Harvard Club of Singapore's 35th Anniversary Dinner, 2004*

Journalists can help frame political chatter on-the-ground, of course. And people rely on the press to deliver the news, because "who has the time to run around Singapore to find the news for ourselves"? The question is – are they reliable? Here, she noted that the press comes in one of three forms: the Rottweiler, the bloodhound and the lapdog.

Singapore's media scene is "fascinating", according to Thio. "I know they try hard to be and to sound different... but there is no competition, and there's a danger when there is no competition, when all the papers report the same way, because then you don't get a variety of perspectives," she said. Another "fascinating" aspect of the media scene in Singapore is how the government has distinguished between the 'old' and the 'new'; with the 'old' depicted as more credible than the 'new'.

While it has been said that the Singapore press cannot be "crusading journalists", reporters are expected to follow a doctrine of "responsible journalism", one of the guidelines of which is to verify information and to represent opposing points of view. Misinformation, she added, kills free speech and democracy as "no public interest is served by publishing or communicating misinformation".

But aside from misrepresentation and misinformation, another area that kills free speech is "militant secularism" – a "chilling" topic for Thio, who admitted, "I don't even dare talk about this because I know someone will blog about it and misrepresent me again".

"Chill speech, kill speech, nil speech"

Thio believes that a person should not be shut out from a debate just because he or she is religious. At the same time, people should not have to believe or agree with someone just because he or she is religious.

"Religious or not religious, we must have a higher mutual commitment to democracy, of hearing each other out. And hearing you doesn't mean I agree with you. I can disagree with you vehemently. I can seek to rebut your arguments. My point is that there should be no pre-emptive strike," she said. So if democracy is about equality, "a secularism which seeks to exclude religious views – and I'm not talking about giving them preference, I'm talking about letting them enter the door – is, to me, very destructive."

Turning to the conduct and manner of civil debate, Thio asked: "Is speaking freely really as important as what you say or the way you say it?" On a personal note, she commented that she will not engage with someone who chooses to 'shout' instead of arguing rationally. The former, she said, represents a commonly-employed "left-wing tactic".

Explaining her position, Thio referenced a [book \(http://www.amazon.com/Indoctrination-U-Against-Academic-Freedom/dp/1594032378/ref=sr_1_1?ie=UTF8&s=books&qid=1258955918&sr=8-1\)](http://www.amazon.com/Indoctrination-U-Against-Academic-Freedom/dp/1594032378/ref=sr_1_1?ie=UTF8&s=books&qid=1258955918&sr=8-1) she had recently read: "If you are a radical left-winger, you will see politics as an 'apocalyptic warfare'. I'm more realistic. I see politics as an art of compromise, which means you don't always get what you want". It is perhaps expected then, for those who view their agenda in absolutes, to employ tactics that ensures the dominance of their views – moves that Thio calls 'undemocratic' and 'repressive'.

I really don't like arguments by insult, having been subject to that myself, I don't think it promotes anything at all.

In politics, some people employ "ad hominem" arguments to kill speech. "They don't want to argue. They seem to pretend to want to argue but they want to avoid argument by shutting down some views," she said. This is where, instead of critiquing the issue, the speaker chooses to attack the person in a bid to destroy his or her credibility. The person at the receiving end of the insults will then likely shut down and retreat from the debate: "That's left-wing; bad left wing... Chill speech, kill speech and nil speech".

"I really don't like arguments by insult, having been subject to that myself, I don't think it promotes anything at all. And my fear is this... If you treat people in a vulgar, vicious and/or violent fashion, you're just going to shut them up, they won't participate, and you'll end up having a society of ghettos – people who think it is better not to speak than to speak and have your head cut off," Thio added.


In that sense, she said, it is easier to be an academic than to be in politics. Academics present both sides: "On the one hand, you have 'this'; on the other hand, you have 'that'". Politicians, however, are expected to take sides: "You have to stand for 'this'; and so everyone who stands for 'that' attacks you... There's no neutrality in politics!"


But be that as it may, democracy does not solve moral issues, Thio reminded the audience of mostly SMU students. Democracy is merely a mechanism for coming to a decision in the face of disagreement – sometimes people agree, and at other times, society will be fractious and polarised. What is important on all sides, however, is a shared commitment to democracy. This means cultivating some degree of civility and temperance.

So while the function of any university in a democracy is to produce educated citizens who are able to engage rationally in debate, democracy requires the involvement of citizens to foster "a culture of reasons". On that note, she urged the students to participate in society and to protect views – even those that they may not like. "I don't like politics, it is a very ugly business but a very necessary one, so you should all enter into it," she concluded.

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